



Memorandum

To: All Legislators

From: Tom Larson, Chief Lobbyist and Director of Legal and Public Affairs

Date: October 3, 2011

Re: AB 163/SB 136 -- Vacant Land Condition Report

The Wisconsin REALTORS® Association (WRA) supports AB 163/SB 136, legislation that requires sellers of vacant land to complete a vacant land condition report (VLCR) at the time of sale.

Background

Current law requires sellers of 1-4 family dwellings to complete a real estate condition report and disclose any known defects about the property to prospective buyers prior to the time the buyer purchases the property. Over the years, this disclosure requirement has helped buyers become better informed about the condition of a property before the time of sale. As a result, fewer conflicts between buyer and seller have resulted due to undisclosed defects related to a property's condition.

Why A Vacant Land Condition Report Is Necessary

The following are reasons why the current real estate condition report requirements should be extended to transactions involving vacant land:

- **Sellers of vacant land are in the best position to know about their property.** Similar to transactions involving 1-4 family dwellings, adverse conditions affecting the vacant land are often known by the seller and are unknown and cannot be easily determined by the buyer prior to purchasing the land. Requiring sellers of vacant land to disclose known defects about the property will help buyers become better informed about a property's condition before they purchase the property.
- **More regulations affecting vacant land.** More regulations at both the federal and state levels are being adopted that affect how vacant land can be used, where development can occur, and the type and amount of fees paid for certain activities.
- **More disclosure requirements.** To achieve better compliance with these regulations and to reduce the number of lawsuits filed by buyers who were unaware of these requirements, the Wisconsin Legislature has imposed a number of new disclosure obligations upon sellers of vacant land. For example, owners of vacant land have an obligation to disclose any

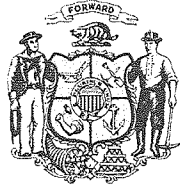
known penalties under the use value law, and whether the property is enrolled in the managed forest program.

- **Not all disclosures can be incorporated into the Offer to Purchase.** While most of the required disclosures have been incorporated into the WB 13 -- Vacant Land Offer to Purchase, the Offer does not contain all of the necessary disclosure obligations, nor should it, given that including ALL the required disclosures would make the Offer considerably longer and more difficult for parties to use.
- **Negative consequences may result if disclosures are not made.** If the seller fails to make the necessary disclosures, the buyer may have the ability to rescind an Offer or may sue the seller, depending upon the nature of the disclosure. A mandatory VLCR may assist sellers in making the necessary disclosures and avoid potential liability.

Questions and Answers About AB 163/SB 136

- **Who must complete the VLCR?** All sellers of vacant land EXCEPT for persons who are exempt under current law (personal representatives, trustees, conservators, and fiduciaries appointed by a court. See Wis. Stat. § 709.01(2).
- **When must a seller provide a VLCR to a prospective buyer?** The seller must provide a VLCR to a prospective buyer no later than 10 days after the seller has accepted an offer to purchase.
- **What are the penalties for not completing a VLCR on time?** The only penalty for failing to complete a VLCR on time is buyer rescission of the offer to purchase. Under the bill, a buyer may rescind the offer to purchase, if (a) the buyer does not receive a VLCR on time, (b) the VLCR is incomplete, or (c) the VLCR discloses a defect of which the buyer was not aware. (Note – other laws may require the seller to disclose information on the VLCR and thus impose other penalties for failing to disclose the information)
- **Where did the disclosures come from?** The proposed disclosures in AB 163/SB 136 are modeled after the disclosures contained in the Seller Disclosure Report - Vacant Land produced by the WRA. The WRA's report has been in use for over 20 years, and contains most of the required disclosures that are common in vacant land transactions.
- **Does this form create new disclosure obligations or liability for the seller?** No. Under Wisconsin common law, sellers of real property have a duty to disclose material adverse facts related to the property to prospective buyers. See e.g., *Ollerman v. O'Rourke Co., Inc.* 94 Wis. 2d 17, 288 N.W.2d 95 (1980). Generally, a material adverse fact is information that would affect a reasonable buyer's decision to purchase the property. See *id.* In addition, state statutes currently require sellers to disclose certain information to prospective buyers (e.g., use value assessments, enrollment in managed forest law program). Accordingly, most of the items listed in the VLCR are arguably material adverse facts that must be disclosed with or without the form.

If you have any questions or if you need additional information, please contact us at (608) 241-2047.



WISCONSIN STATE SENATE
DALE W. SCHULTZ

Thank you Mr. Chairman,

I am here today to testify in support of Senate Bill 136, the purpose of which is to create an equivalent of the so-called "real estate condition report" currently required in the sale of residential property for the sale of vacant land. As you may know, current statute compels property owners to complete a real estate condition report disclosing any known defects on the property, but such a report is not required in the sale of vacant land, and I am in favor of creating a vacant land disclosure report to protect potential property purchasers.

Numerous factors (such as whether or not property is enrolled in MFL etc) can affect land value, some of which are not readily apparent upon purchase of a property. Because such factors might determine whether or not an entity or individual actually purchases said property, I believe full disclosure, in the form of a vacant land condition report, is essential.

A handwritten signature in black ink, appearing to read "Dale W. Schultz".

Dale W. Schultz
State Senator



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